

**CITY COUNCIL AGENDA TOPIC**

Ordinance authorizing and providing for acquisition of interests in land for the purpose of constructing the Bogline Sanitary Sewer Replacement Project (156<sup>th</sup> Avenue SE and SE 11<sup>th</sup> Street); providing for condemnation, appropriation, taking of land and property rights necessary therefore; providing for payment; directing the initiation of appropriate proceedings in the manner provided by law for said condemnation; and establishing an effective date.

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**EXECUTIVE SUMMARY****ACTION**

This Ordinance will authorize the acquisition of property rights necessary for the Bogline Sanitary Sewer Replacement Project including the use of eminent domain if mutual agreement cannot be reached through voluntary negotiations.

**RECOMMENDATION**

Move to adopt Ordinance No. 6788

**BACKGROUND/ANALYSIS**

This project is part of the Utilities Capital Investment Program (CIP) Sewer System Pipeline Repair and Replacement (CIP Plan No. S-66). This program replaces sewer pipes throughout the service area that are aging and in poor condition. Utilities' current plan is to replace sewer pipes at a rate of 0.5 to 0.75 miles per year. Pipes are replaced when analysis indicates replacement is more cost-effective than ongoing maintenance. In the short term, this program reduces the likelihood of system failures, damage claims, and rate increases by proactively managing the system. In the long term, timely replacement or repair of wastewater facilities keeps customer rates as low as practical by managing the system at the lowest life-cycle cost, while maintaining service levels and meeting service requirements.

The Bogline Sanitary Sewer Replacement Project, which is located near the intersection of 156<sup>th</sup> Avenue SE & SE 11<sup>th</sup> Street, involves the replacement of approximately 1,270 linear feet of sanitary sewer pipeline, most of which were installed between 1956 and 1972 in public utility easements that run through private property (backyards, side yards), and inside public right of way.

Segments of this pipeline have deteriorated or experienced settlement due to being located on and adjacent to wetland areas. Additionally, this section of the pipeline includes sharp angle turns that impair the system's flow and efficiency. The goal of the project is to create a long-term solution that eliminates the need for frequent site visits and improves overall system reliability for the neighborhood.

The City needs seven permanent easements and 16 temporary construction easements to complete construction. The City has already obtained five permanent easements and 14 temporary construction easements and is still in need of two permanent easements and two temporary construction easements. Staff have been negotiating for over a year with these remaining property owners and have been unable to reach a mutual agreement.

To complete the project, the acquisition of property rights from two parcels is required. See Attachments for descriptions of property rights needed, including depictions and legal descriptions. These property rights will be used for the removal and replacement of the existing sewer lines. The attachments also include a vicinity map and a copy of the publication notice.

Adoption of the proposed Ordinance would empower the City Attorney's Office to commence a condemnation action to keep the project on schedule, and further enables property owners to sell their property rights to the City, by agreement, in lieu of condemnation, thus benefitting property owners by exempting their transactions from real estate excise tax.

While the proposed Ordinance would provide condemnation authority to ensure that all the required property rights can be obtained in a timely manner, it is staff's intention to continue to negotiate with the affected property owners with the aim of arriving at mutually agreeable purchases for all needed property rights.

As required by condemnation statutes, notice of Council's meeting to consider adoption of this Ordinance has been mailed to the property owners of record of the listed properties, and has also been published in *The Seattle Times*.

## **POLICY & FISCAL IMPACTS**

### **Policy Impact**

Under Bellevue City Code 4.30.010 and RCW 8.12.040, major real property acquisitions must be approved by the City Council. RCW Chapter 8.12 establishes the authority and procedure for cities to acquire property by condemnation for utilities and other public purposes. The statutes provide that when a city seeks to condemn property for a public purpose, it must first provide notice in the local newspaper as well as by certified mail to the affected property owners. The statutes further provide that the city indicate that compensation for acquisitions be made from applicable city funds, or, if applicable, by special assessment upon the property benefitted by the project.

Under WAC 458-61A-206, transfers of real property to a governmental entity under an imminent threat of the exercise of eminent domain are not subject to real estate excise tax.

Under 26 U.S. Code § 1033, transfers of real property to a governmental entity under an imminent threat of the exercise of eminent domain may qualify for federal tax benefits, including tax-deferred exchanges.

### **Fiscal Impact**

The costs to acquire property rights, through negotiation or condemnation, are included in the 2023-2029 Utilities CIP Sewer System Pipeline Repair and Replacement (CIP Plan No. S-66).

## **OPTIONS**

1. Adopt the Ordinance authorizing and providing for acquisition of interests in land for the purpose of constructing the Bogline Sanitary Sewer Replacement Project (156<sup>th</sup> Avenue SE and SE 11<sup>th</sup> Street); providing for condemnation, appropriation, taking of land and property rights necessary therefore; providing for payment; directing the initiation of appropriate proceedings in the manner provided by law for said condemnation; and establishing an effective date.
2. Do not adopt the Ordinance and provide alternative direction to staff.

## **ATTACHMENTS**

- A. Property Rights Acquisition Table & Depiction of Acquisition
  - B. Legal Descriptions of Properties
  - C. Vicinity/Project Map
  - D. Copy of Publication Notice
  - E. CIP Project Description (S-66)
- Proposed Ordinance No. 6788

## **AVAILABLE IN COUNCIL LIBRARY**

N/A